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THE FIRST WRITTEN CONSTITUTION IN THE WORLD

AN IMPORTANT DOCUMENT OF
THE TIME OF THE HOLY PROPHET

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1975

By
M. HAMIDULLAH

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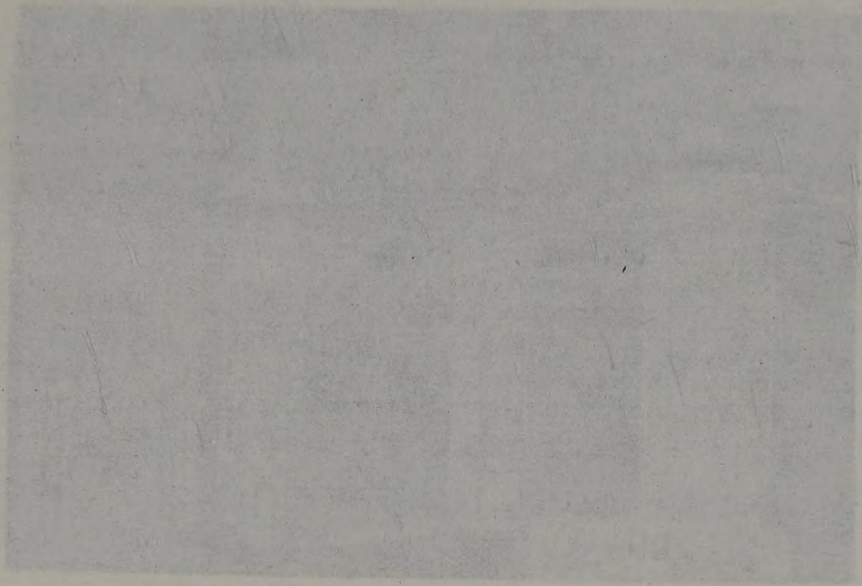

* Ustawanat ul-Wafd (the Pillar of Embassies) where the Prophet received foreign embassies.

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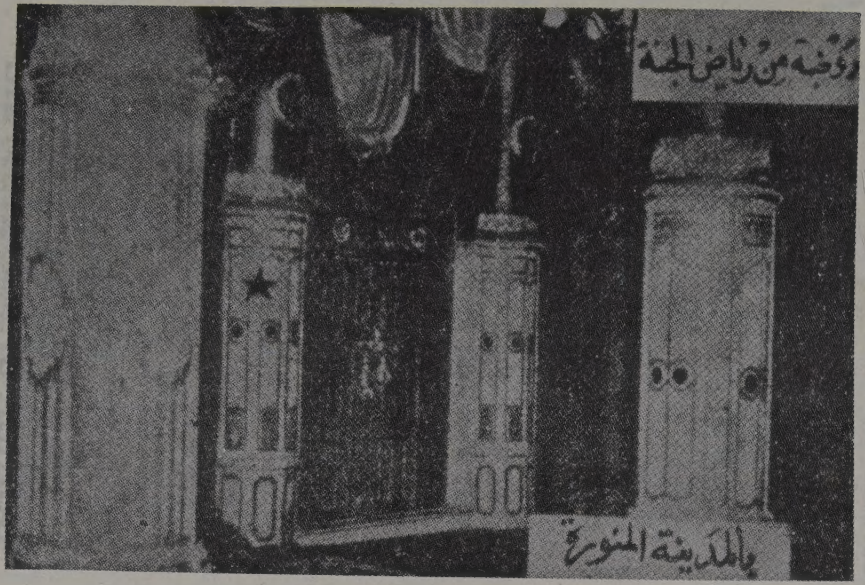

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* Cremona-in-mille (the Billion of Emporia)

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THE FIRST WRITTEN-CONSTITUTION IN THE WORLD

An Important Document of the Time of the Holy Prophet

MUHAMMAD HAMIDULLAH

3RD REVISED EDITION
1394 H 1975

SH. MUHAMMAD ASHRAF
Publishers, Booksellers & Exporters
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CONTENTS

Foreword to the New edition	1
Foreword to the 2nd edition	4
Introduction	7
Translation of the Text	41
Arabic Text	55
Bibliography	65
Index	72

Frontispiece
Photo of the place in the Mosque of Madīnah, where the Prophet used to receive the ambassadors

بِسْمِ اللهِ الرَّحْمٰنِ الرَّحِيْمِ

FOREWORD TO THE NEW EDITION

No doubt an author rejoices physically when there is demand of a new edition of his writings. There was occasion of a spiritual and even metaphysical happiness to me on the good luck that the work of the revision was accomplished this time in the holiest month of Ramaḍān 1394, in the holiest region of Mecca-Madīnah !

During this visit, chance led me to East Arabic also. It is known (cf. Ibn Ḥanbal, *Musnad*, II, 206-7) that the Prophet had long "trampled the length and breadth" of the region of Hajar, al-Mushaqqar, aṣ-Ṣafā (وطئت بلادكم و فسح لى فيها) and "had stopped on the spring of az-Zārah (وقفت على عين الزارة) It is also known (cf al-Bukhārīy, *Ṣaḥīḥ*. XI, 11, No. 1) that the first mosque, where the Friday Service of Prayer was celebrated, after that of the Mosque of the Prophet at Madīnah, was at Juwāthā (مسجد عبدالقيس بجواثى من البحرين). We know further that the region of al-

Bahrain (not the island of this name, but the country facing it on the mainland of Arabia) had voluntarily and enthusiastically acceded to the Islamic faith and the Islamic State in the very time of the Prophet, eliciting his praise and benediction, and he maintained al-Mundhir ibn Sāwā governor of Kisrā, as his own governor. Then a voluminous exchange of correspondence took place on matters administrative and juridical —questions arising out of the application of the constitutional document under discussion here to their region, the "province" of al-Bahrain. (And one of the letters of the Prophet to al-Mundhir has even come down to us in the original (cf. my الوثائق السياسية No. 75, and my *Le Prophète de l'Islam*, § 646-52).

But these places had long been forgotten, and the visit of the Prophet to them too. Hajr is now rediscovered in the suburbs of the modern town of al-Hufūf, where the mosque of al-Baṭṭālīyah stands today, (Mushaqqar and Ṣafā being nearby). There are 420 springs in the neighbourhood, and the irrigational system is reorganised with canals. A bit further away the ruined city of Juwāthā too has now been identified, and its celebrated mosque excavated and restored to

service of worship.

As to the Spring of az-Zārah, that too exists in the northern suburbs of the town al-Qaṭīf at a distance of about 3 kilometres, to the south of Auwāmīyah. There is a thriving oasis and the old natural spring is now supplemented by another by means of an artesian well.

The Holy Prophet has had the satisfaction, before he breathed his last, to see that the "Easts and the Wests of the earth" (مشارق الارض و مغا ربها) had submitted, as they ought to, to the Rule of God, reflecting in the constitution he had promulgated for the City-State of Madīnah, in the year 1 of the Hijrah.

Mecca-Madīnah M. H.
Ramaḍān 1394.

بِسْمِ اللهِ الرَّحْمٰنِ الرَّحِيْمِ

FOREWORD TO THE SECOND EDITION

It is a proud heritage of the Muslims that the first written-constitution of a State promulgated in the world by a head of the State originates from no less a personality than the Holy Prophet of Islam himself. The new generations ought to know that. Such is the first and foremost reason prompting me to prepare this study.

After the reconquest of their political independence in the three continents of the old world, Muslim States are naturally bound to take interest in constitution-making. No tackling of the present and no planning for the future can ever be perfect if it does not take into consideration the past. The first link in the chain of the past history of the constitutional law in Islam is of course the time of the Holy Prophet—that perennial and inspiring source of Muslim law. Other periods may be dealt with in due course in separate monographs; and in fact I am already engaged on this research since several years, lec-

turing in the University of Istanbul on the same subject, selecting every year one caliph or one period. It took me ten academic years to come down to the end of the Umaiyad caliphate, in 1968.

There are reasons besides these to publish, or rather republish, this humble work. I take the opportunity of replying to a possible objection on the part of the readers who may think that the document emanating from the Prophet of Islam, even though important, cannot be the first of its kind in the world.

In the present state of my knowledge, there is no earlier text known to history. Solon's work at Athens cannot be considered as the promulgation of a constitution. He was not the sovereign monarch but a delegate of the governing body; he did propose certain constitutional changes which were approved and applied by the governing body of the City-State of Athens, but we do not know if they were published in writing; certainly they did not constitute a comprehensive constitution for running the State.

We do possess the *Constitution of Athens* by Aristotle, but it is not a constitution: it is the history and evolution of the constitution of the City-State of Athens, compiled by a minister. In

his time, the City-State had long since ceased to exist, and Athens had become the capital of the ephemeral though vast empire of Alexander the Great.

Aristotle's Indian contemporary and minister of the Buddhist emperor Chandragupta, viz. Kautilya, has also left to the posterity his *Artha Sastra* (or Political Economy), a work which has been translated into English, German, Russian, Japanese, etc. But it resembles more to Māwardī and Abū Ya'lā's *al-Aḥkām as-Sulṭāniyah* and to Imām al-Ḥaramain Juwainī's *Ghiyāth al-Umam*—and it will be interesting to undertake a comparative study of them—than to a constitutional law. It was not promulgated by the sovereign.

For these reasons I provisionally maintain that the text of the time of the Prophet of Islam which is presented herewith is the earliest of its kind in history.

Let one not forget also the point that this *written* document emanates from an *Ummī*, blessed be his memory.

M.H.

Paris-Istanbul
1388/1968

THE FIRST WRITTEN-CONSTITUTION IN THE WORLD

An Important Document of the Time of the Holy Prophet

INTRODUCTION

(1) Not to speak of civilised nations, even the savages possess their own fixed rules for government and administration of justice; and even the most autocratic chief finds himself controlled by them.[1] Generally speaking, whenever such rules have been collected in writting, they are called *books*. The words *bible* and *scripture* mean book. The *Yāsa* of Chingīz Khān[2] may also mean "book" (and in modern Turkish, the infinitive *yāzmak* means to write). The *Shu-king* of confucius, too, literally means the *book*.[3] The Muslims' Holy *Qur'ān* though *literally* means *Reading*, it is also commonly known under the name of *Kitāb* (i.e. the *Book*) or *Kitāb Allāh* (the

1. Cf. H.J. Laski, *Grammar of Politics*.
2. Cf. Ibn Faḍlallāh al-'Umarīy, *Masālik*, MS. Paris.
3. Cf. M.G. Pothier, *Confucius et Mencius*, Paris, 1890, p. 3.

Book of God).

(2) Although the rules and regulations of a country can be found in a more or less written form everywhere, yet, in spite of strenuous search I could not find any instance of the *constitution* of a country, as distinct from ordinary laws, reduced to writing, before the time of the Holy Prophet Muhammad. True, the Biblical Book I-Samuel VIII, 11-18, X, 25 mentions the rights of tyrannical kings and duties of the wretched subjects, and even their having been once put to writing as a sort of "Social Contact" (though without further details). True also, the *Manu Smirti* (500 B C.) mentions the duties of a king; and the *Artha Sastra* (science of politics) by Kautilya (300 B C.) and the books of Aristotle, written about the same time, contain complete treatises on politics. Aristotle described the constitutions of 158 of his contemporary City-States[4] of many countries, including India.[5] From among these monographs of Aristotle, only the constitution of Athens has come down to us. It was discovered on papyrus in Egypt and was publish-

4. Cf. Kenyon, *Aristotle on the Athenian Constitution*, p. xiii; also *Encyclopædia of Social Sciences*, Vol. I, p. 27.

5. Kenyon, op. cit., p. xv.

ed in the year 1891. It has also been translated into English and other languages. Yet writings of this kind are either in the nature of text-books or "advice-books" to princes, or are historical accounts of the constitutional set up of certain places. None of these enjoys the dignity of an authoritative constitution of a State issued by the sovereign of the country. Ours is the first of its kind in the world.

(3) In the year 1 H., i.e. the very first year of the Holy Prophet's migration to Madīnah, he had a deed drawn up in which there was a detailed discussion of the prerogatives and obligations of the ruler and the ruled as well as of other immediate requirements (including a sort of social insurance for the needy). Fortunately, the whole of this document, word for word, has been reproduced by Ibn Isḥāq and Abū 'Ubaid in their respective books,—for the text preserved by Ibn Abī Khaithamah, see our "Bibliography" below at the end of the book—and it is some discussion of it that is proposed here.

(4) This document contains fifty-two sentences, or, to use legal terminology, sections; and is an invaluable example of legal language and

the manner of document-writing of the time. The importance of it has been felt by the European Judeo Christians even more than by the Muslim historians. Besides Wellhausen, Mueller, Grimme, Sprenger, Wensinck, Caetani, Buhl—see the Bibliography at the end—and others, a German historian, Ranke, in the course of a short history of the world, has felt it necessary to mention it in considerable detail. It is unnecessary to discuss here the remarks of these German, Dutch, Italian, English and other writers. I just propose to express here my own humble opinion on the question.

(5) Before discussing the contents of the document in question, it is necessary to outline the historical background and the circumstances under which it was prepared and issued.

(6) When the Holy Prophet started his preaching and reformative work in the holy city of Mecca, and proposed a change in the beliefs and practices existing for generations, he first surprised his countrymen, then he was hated and, in the end, he encountered their opposition and hostility. That from the very first day his mission was universal in its nature, and the possibi-

lity of its spreading immediately and with ease over the whole of the known world, particularly the Iranian and the Roman (Byzantine) empires, was clearly discernible. For the Holy Prophet, in the course of his preachings, used to predict, to the people with material interests, the conquests of these empires.[6] But inasmuch as he was a younger member of a comparatively poorer and weaker clan, it was difficult for him to be accepted in Mecca as a leader.

(7) The Prophet had, no doubt, family connections both in Ṭā'if[7] and Madīnah.[8] It was expectations on this score that took him first to Ṭā'if, the nearer of the two places; but the difficulties that greeted him there were greater than those in his native city. At last, after years of persistent efforts during the Ḥajj seasons, he could secure the adherence of a few people who belonged to no other place than Madīnah. They it was who promised to help and give shelter to

6. Cf. Ibn Hishām, *Sīrat Rasūlillah*, p. 278, 326; Ibn Sa'd, *Ṭabaqāt*, I/1, p. 134; Suhailī, II, 6; Balādhurī, *Ansāb*, I, 132, etc.

7. Ibn Qutaibah, *Ma'ārif*, p. 43; Abū Nu'aim, *Dalā'il an-Nubūwah*, ch. xx.

8. Ibn Hishām, op. cit., pp. 107, 336, 346; Ibn Sa'd, op. cit., I/1, pp. 34, 45, 46; Ibn Qutaibah, op. cit., § Aḥwāl 'Umūmatihī; Ṭabarīy *History*, I, pp. 1084-6.

him and his Meccan companions in the event of their migration to Madīnah.

(8) The state of affairs in Mecca had become unbearable. Apart from general hostility, physical persecutions threatened the lives of many among the believers.

(9) For this reason, the Muslims of Mecca began to leave their native city for Madīnah. The Meccans (non-Muslims) became afraid lest these fugitives might make preparations for retaliation from outside. Accordingly it was decided to lay siege to the house of the Prophet and murder him there by night. But Providence willed it otherwise. The Prophet managed quietly to leave Mecca, and reached Madīnah safely. In their rage, the Meccans forcibly took possession of the property and belongings of the Prophet[9] and of other Muslim emigrants.[10] The total number of believers in Madīnah, at this time, including the Meccan refugees, hardly exceeded a few hundred, while the total population of Madīnah at this time is estimated at

9. Cf. Bukhārīy, *Ṣaḥīḥ*, Book lxiv, Chap. 84, Ḥadīth 3; Sarakhsiy *Mabsūṭ*, X, 52.

10. Cf. Ibn Hishām, op. cit., p. 339; also pp. 321-2.

about ten thousand, to which Jews contributed nearly a half.

(10) Mecca enjoyed at that time the status of an organised City-State, where there were some twenty-five public offices concerning different departments such as the Army, the Revenue, the Temple, the Foreign Affairs, the Administration of Justice, and the like. A detailed discussion of these institutions has been presented by me in a paper read at the Orientalists' Conference at Trivandrum.[11] As contrasted with this, Madīnah was almost in a state of anarchy, where tribalism prevailed So, if the Arab section of the population was divided into twelve tribes of Aws and Khazraj, the Jews were divided into the ten tribes of Banū Qainuqā', Banu'n-Naḍīr, and Banū Quraiẓah, and lived as clients of as many Arab tribes of the locality. Dissensions raged among them since generations. Some of the Arabs, having entered into alliance with some of the Jews, had been on terms of hostility with other Arabs, who, in their turn, were similarly allied to some other Jews. These continuous wars

11. "City-State of Mecca," *Islamic Culture*, Hyderabad-Deccan July 1938.

had tired both the parties out.[12] And although there were some who were anxious to secure military help from outside tribes such as the Quraish of Mecca, the peace-loving parties were gaining preponderance in the city, and a considerably large section of the people of Madīnah had begun to make preparations to install 'Abdallāh ibn Ubaiy ibn Salūl as king. So much so that, according to Bukhārīy,[13] Ibn Hishām[14] and others,[15] a crown was already under manufacture to be worn on the occasion of enthronement.

(11) True, the Holy Prophet had appointed at the time of the Pact of 'Aqabah twelve Muslims to represent him in the twelve Arab tribes, one in each, called *Naqīb*, and one Naqīb of the Naqībs also; and thus tried to create a centralisation of power. But, apart from this, every tribe had its independent sovereignty and decided its own affairs in its own *saqīfah* or shed, and there was no central municipal organisation

12. Cf. Ibn Hishām, op. cit., p. 287; Ibn Sa'd, op. cit., I/1, p. 147; Ibn Ḥanbal, *Musnad*, V, p. 427; Bukhārīy, Book lxviii, Chap. I, No. 27. 46.

13. Book lxxix, Chap. 26. 14. Op. cit., p. 726.

15. E.g. Ṭabarīy, op. cit., I, p. 1511, and commentary of the Qur'ān by him, Sūrah lxiii. 8.

in the city. Through the efforts of trained preachers, a considerable number of people in the city had accepted Islam in the course of three years. But religion was yet a domestic affair there, and had not attained any political status: persons belonging to different religions used to live in the same house. It was in these circumstances that the Prophet came to Madīnah, where the following problems demanded urgent solution:

(1) Definition of the rights and duties, of his own as well as those of the local inhabitants.

(2) Arrangements for the rehabilitation of the Meccan refugees.

(3) An understanding with the non-Muslims of the city, particularly the Jews.

(4) Arrangements for political organisation and military defence of the city.

(5) Compensation for the loss of life and property suffered by the refugees at the hands of the Quraish of Mecca.

(12) In view of these aims and objects, the Holy Prophet, a few weeks or months after his arrival in Madīnah, had a deed drawn up, which has been referred to as a *kitāb* and *ṣaḥīfah* in the

deed itself, and which obviously was written after consultation with the people concerned. It should be borne in mind that the general laws of the country, meaning the chapters of the Qur'ān, were promptly reduced to writing according as they were promulgated (i e. revealed); but as far as his own utterances or instructions were concerned, the modest and cautious Prophet had issued a general prohibitory order against their being written down (at least in the beginning). That the document under discussion was written down in spite of this order is significant;—a document which has been referred to as *kitāb* and *ṣaḥīfah*, meaning a code of action or a chart of rights and duties. In fact it amounted to a declaration of the city of Madīnah as a City-State for the first time, and to the laying down of a code for its administration.

(13) Hobbes, Rousseau and other political-scientists have considered social contracts between the rulers and the ruled as the beginning of a State. A patent and factual example of this is to be found in the *bai'ah* (contract or pact) of 'Aqabah, in which the people of Madīnah accepted the Prophet as their leader, invited him to come to their

country, and agreed to obey his orders in weal and woe. This is the reason why the document under discussion was not of the type of a contract, but was issued as a prescription and a proclamation. Everyone knows that the word *kitāb* means a prescription and a command. For instance in the Qur'ānic passage: "Verily the prayer service is a timed ordinance (*kitāb*) for the believers"[16]; or "Most surely it has been prescribed (*kitāb*) for the wicked that they shall be in the hell-prison . . . most surely it has been prescribed (*kitāb*) for the virtuous that they shall be in the high-placed paradises"[17]; or "Fighting was prescribed (*kutiba*) on them"[18]—the word *kitāb* has been used in this particular sense in all these citations. The German word *Vorschrift*, the word *prescription* in French and English, the word *prescrizione* in Italian and *prescripcion* in Spanish, even as *predpisaniye* in Russian—all mean command or ordinance, and have their root meaning in "writing". The Holy Prophet, who was a lover of order and unity, sought the remedy for the centrifugal conditions which prevailed in Arabia in general and in Madīnah in particular, in the motto "one ruler and one law". The centripetal commands of *zakāt* and *ḥajj*—which later gave the opportunity for the people to be

16. iv. 103. 17. lxxxiii. 7 and 18.
18. iv. 77.

brought under a common control through powers given to the central government to levy and collect taxes from all, and through pilgrimage to a common *qiblah*—had not yet been promulgated. Still, institutions such as faith in one God, obedience to the commands of the same Prophet, and the observance of the congregational prayers, which so vitally affected their beliefs and actions, had been in existence. Now this new constitution of a City-State brought with it the very important, and—to Arabia at least—very revolutionary change and improvement, by providing the people with a central public institution for seeking justice, in place of everyone seeking it with the power of his own hand or, at best, that of his family. This epoch-making innovation has been recorded in that very document which brought an end for all times to the chaos of tribalism and which laid the basis for a wider institution, viz a State. In this document, the Holy Prophet secured the highest judicial, legislative and executive powers for himself; but a very important and remarkable difference between this authority and the autocratic royal authorities of other countries was that materialism had no part to play here. The Holy Prophet introduced moral elements in politics. He regarded God as the source of authority, and considered himself as His messenger and agent; and alongside with this he declared the commands and injunctions ordained for the people

as equally applicable to his own self. And in view of very many cases of civil and tort nature brought against his holy person[19] in his own lifetime, we can say that Islam rejects the theory that "king can do no wrong". And since the most powerful man in the State could not violate with impunity the laws at will, other officials and the people in general naturally observed them with greater care and scruple.

Analysis

(14) This document has two distinct parts :

(15) In the first part, excluding the invocatory formula "With the name of God, the Most Merciful, the All-Merciful," there are twenty-five clauses, which were counted as twenty-three by Wellhausen, whose numbering has been followed by European writers. I have advisedly retained this numbering of twenty-three clauses, so as not to confuse anyone availing of European materials, with this much of difference that I have divided certain clauses into two by the signs *a* and *b* and thus considered the first part of the document to contain twenty-five clauses.

(16) The second part runs between clauses 24 and 47. But it has to be thrice subdivided

19. Cf. Ibn Hishām, op. cit., p. 444 : *Islamic Culture*, April 1941, pp. 192-5; (my *Muslim Conduct of State*. ‖ 258-260).

into sub-clauses. In my count this part really consists of twenty-seven clauses; and thus the whole document consists of fifty-two clauses in all.

(17) The first twenty-three sections lay down rules affecting the Meccan refugees (*Muhājirūn*) and the Madinite helpers (*Anṣār*); and the rest of them discuss the rights and obligations of Jewish tribes of Madīnah. In both parts, one sentence has been repeated, to the effect that the final court of appeal will be the Holy Prophet himself. There is no difficulty in understanding this position in so far as the Muslim *Refugees* and *Helpers* are concerned; but it is not quite so easy for one to understand how the non-believing sections of the population could agree to invest a newcomer and a stranger at that time with so much authority within a few weeks of his arrival. Apart from the plausible explanation that the Arabs in general used to refer their quarrels to foreigners (*kāhin*, *ḥakam*, etc.), so far as the Madinite Arabs are concerned, it may appear to be a somewhat satisfying reply to be told that since tribal organisation had prevailed among them hitherto, and since the tribal chiefs had accepted Islam, the younger relatives—although they had not as yet accepted the religion of their elders—were compelled to follow these latter in what they did otherwise. Due to the peculiar nature of the Arab social system, they could not separate themselves from the

tribe; and even outside their own territory they could not have any security of life and possession without the help of the rest of the tribe. To belong to a tribe there in those days was as much important as belonging to a nation and having its passport now-a-days. It has been clearly laid down in the document that the pagan relatives of the Madinite Helpers could avail of the great centralised strength, brought about by the combination of all the tribes of Madīnah in conjunction with the refugees of Mecca and others, provided only that in political matters they should create no obstacle in the way of the central government. Thus it has been commanded in the document (§1, 16, and 20) that the idolaters and the followers of the Jewish faith in these Arab tribes should follow the Muslims and help them in war, and that they should neither themselves give quarter to the lives and property of the Quraish of Mecca nor should they prevent the Muslims from attacking the same. In other words, these people were given the right of citizenship on condition of their breaking alliance with the Quraish, cutting off all connection with them, and at best remaining neutral in the Muslims' relationship with them; and they had to agree to this. We also come across statements from the pen of Arab writers purporting that the Arabs of Madīnah had become sick of fratricidal and internecine fightings, and were, in their dilemma, prepared to follow a

life of peace even by appointing some outside non-party man as their ruler, as stated above.

(18) So far about the Arab non-Muslims. It does not seem probable that the Jews also accepted the political authority of the Holy Prophet in those early days. So far as I can see it, the second part of the document, i.e. the code for the Jews, was an event following the Battle of Badr, which, on account of the glorious victory achieved by the Muslims, had created an impression on all minds in their favour. The people of Madīnah had repudiated all treaty alliances with the Jews. The Holy Prophet had made the strength of the Muslims immensely secure through his alliances with such tribes in the neighbourhood of Madīnah as Banū Ḍamrah and Juhainah. The Jews were divided into two sections rival to each other. It was not possible for them to live in mutual friendship or to feel safe and secure in their independent isolation. Cut off from all sides, they had become friendless and a prey to any and every strong invader. Circumstances such as these obliged them to seek the protective co-operation of the Holy Prophet, while retaining their religious freedom as well as internal autonomy. And as I have just stated, this event could have taken place only after the Battle of Badr, not before that. Although the two parts of the document constitute one complete whole, and its text and style also indicate same authorship, and though Muslim

historians generally state that this document was written in the beginning of the first year of the Hijrah, yet it is also possible that the first part of the document was written in the first year of the Hijrah era, while the second part was added on to it in the second year, after the Battle of Badr. This view of mine is supported by the fact that in the *Lisān al-'Arab* whenever there is a reference to this document, it has been given two names. In one place it has been referred to as "the code for the *Refugees* and *Helpers*," while a little below this, referring to the second part of it, it has been designated as "the code for the Jews".[20] A more direct evidence on this score is furnished by the fact that imām Abū Dāwūd[21] has described this code for the Jews as an event following the Battle of Badr.

(19) As has been stated above, there are two distinct parts in this Code: one concerns the Muslims and the Arab tribes, while the second the Jews. It will not be out of place to give here a short summary of each.

(20) In the very first clause, a proclamation has been made of the inauguration of an Islamic political unit composed of the Refugees of Mecca and the Helpers of Madīnah, and also of those

20. Cf. *Lisān*, ر ب ب r-b-'.
21. *Sunan*, xix : 21.

others who were willing to take part in wars under the guidance of and in co-operation with this united body of the Muslims of Mecca and Madīnah.

(21) It has been further laid down that this political unit will obey the orders issued by "the Prophet Muḥammad the Messenger of God" (§ 1). In the last sentence of this part of the document, which concerns Muslims, this principle is repeated, viz. that, although the source of all authority is God Himself, yet people will obey the Messenger of God—the Prophet Muḥammad ; and in all their differences and quarrels will turn to him and regard his verdict in these matters as final (§ 23). Also that this political unit, in spite of the variegated nature of its internal composition, will be considered as one community (*ummah*), and will hold a distinct and independent position as compared with the rest of the world, and that all classes of Muslims will have equal rights and obligations (§ 2). And feelings of self-respect and righteousness were instilled in their minds in spite of the smallness of their number and the weakness and dangers amongst which they had to live (§ 13 and 20). The question of war and peace was regarded as the prerogative of the central authority, and it was made impossible that some section should enter into peace or war while others remained out of it. Military service was made compulsory, and

everyone was to take equal part in it. When the fighting was actually going on, different detachments would fight and take rest by turns; and it could not be that a whole battle should be fought by one section of the army alone (§ 17 and 18). Although peace and war were to be treated as a central question, the right of giving quarter would, as before, accrue to everyone, small or great, and the promise of protection given by even the humblest person was to be honoured by the whole community (§ 15). Thus the principles of brotherhood, equality and freedom of action were made to play an active part in this political unit. The freedom of giving quarter was circumscribed only by one condition, viz. if any idolatrous Arab wanted to acquire the rights of a non-Muslim subject in this political unit, he was obliged not to give any quarter to the lives and property of the Quraish, nor put any obstacle in the way of the Muslims causing injury to the lives and property of the Quraish in the exercise of their rights of belligerency (§ 20*b*). Two events are worth noting in connection with this section. They have been mentioned by Bukhārīy,[22] and they took place before the Battle of Badr. In each of these cases a very important Muslim personality had undertaken to protect the property of a member of the Quraish on account

22. xl. : 2, lxiv : 2.

of his personal friendly relations with him. True, the prohibition against protection to the Quraish, as contained in this clause, was applicable only to the idolatrous subjects, but it is only reasonable that Muslims also should abide by it; and, as a matter of fact, even in the absence of any explicit injunction they used to act upon it. Hence it is that in my opinion this section had not found place in the original document, but was appended to it later on either at the conclusion of the Battle of Badr, when a treaty was concluded with the Jewish tribes, or in the neighbourhood of this time. All the Muslims were required to be helping one another and sharing one another's pain and sorrow in the course of a war (§ 19). On the question of the administration of justice, while the Prophet was regarded as the final court of appeal, for the realisation of damages, blood-money, etc., the old system of social insurance was confirmed and enlarged, to the effect that if anyone became liable to any payment of blood money, his relatives should come to his help. Similarly, if anyone was taken prisoner by the enemy, and was required to pay for his ransom, his tribe should be held responsible for the payment (§ 4). To keep in line with this arrangement, the city was divided into several districts (or wards), meant for different tribes, people of each tribe living together in the same locality and away from others.

In each ward there were a chief (*naqīb*), several deputy chiefs (*'arīf*), and a meeting place (called *saqīfah*). We cannot directly trace the existence of any ward fund. Most probably subscriptions were raised as needs arose—(although the Banu'n-Naḍīr, the Jewish tribe, had their clan funds; thus in *as-Sīrah ash-Sha'mīyah*, in the course of a discussion on the Battle of Sawīq it is written: "Sallām ibn Mishkam was the head of the tribe of Banu'n-Naḍīr and its treasurer, that is the keeper of the funds which they used to collect as a provision against hard times and what might befall them")—and these communes or ward councils were, to a great extent, autonomous and self-contained, forming so to say the units of a federation or even a confederation.

(22) The Helpers (i.e. Madinite Muslims) had already their tribal units; and now for legal and social purposes the whole body of the Refugees (i.e. Meccan Muslim settlers in Madīnah) were regarded as one tribe (§ 3). To create a new tribe out of persons of heterogeneous origins was a revolutionary initiative. It could be considered as the first concrete step towards the realisation of the Islamic reform of the notion of nationality. As everybody knows, this is supra-racial and supra-regional; it is not based on the fatality of the birth in a certain place, with a certain mother tongue, with a certain colour of skin, but on the deliberate act of every individual,

to adhere to a group founded on the identity of ideology. It was provided that if any ward association were not in a position to meet the liabilities of any of its members, it would be incumbent on other wards to lend it a helping hand (§ 12). It was further emphatically laid down that if anyone became an associate member (*mawālī*, sing. *mawlā*) through a legal or contractual bond of fraternity with a regular member of a tribe, such an associate member would have no right to disagree with the original member, whose associate he was (§ 12*b*). It was further enjoined in connection with this order that no member should make anyone his brother-in-alliance (*mawlā*), if he was already in similar alliance with another person, without the consent of this latter (§ ibid. in the variant as reported by Ibn Ḥanbal). The right of seeking justice was transferred from the individuals to the community, i.e. the central authority ; and this was a great revolution. It was decreed that in matters affecting the administration of justice, none would be permitted to take sides or show any favouritism to one's relations or even to try to save one's own son from the course of law ; and that all Muslims should give full co-operation in the matter of bringing to book everyone who made any mischief or was on the way of creating one (§ 13). An act of wilful murder was to be avenged by capital punishment. The heir of the murdered

person, however, was given the option of reprieving the capital punishment and accepting blood-money. Strong prohibition was issued against all interferences with the course of law and justice (§ 21). Although, according to imām Abū Ḥanīfah, if a Muslim murders a non-Muslim, capital punishment will be given, in this document Muslims were advised not to insist on capital punishment nor help any non-Muslim against a Muslim (§ 14). This persuasion, which did not amount to categorical prohibition, was perhaps necessary to instill into the Muslim mind a feeling of solidarity and superiority of faith, which was so important for a rising nation destined to do great deeds. The opinion of Abū Ḥnīfah, based on another Ḥadīth of the Prophet himself, shows that he did not read into it any absolute or permanent prohibition of a Muslim murderer being punished with death for a non-Muslim victim; and who can doubt the orthodoxy of Abū Ḥanīfah? Similarly, it was forbidden to give shelter or help to any culprit guilty of murder. It was stated that if a person who had been a believer in God and in the Day of the Last Judgement, and had agreed to obey the orders set forth in this document, helped or gave protection to any murderer, he would be under the curse and chastisement of God on the Day of Resurrection, and would have no escape out of it.

(23) Some among the Madinite Arabs had

embraced the Jewish faith. Particularly among these were those children whose parents had raised them as Jews in fulfilment of certain vows. There was a special section dealing apparently with such persons as saying that if they were prepared for a subordinate co-operation, they would be given rights of citizens equal with Muslims: they would be given protection and help, and no manner of oppression would be allowed against them (§ 16).

(24) So far we have discussed such matters as are contained in the first part of the document and cercern the Arabs of Madīnah. The second part, as I have already said, concerns the Jewish tribes.

(25) It has already been discussed above whether this document concerning the Jews was prepared at the same time as the rules relating to the Helpers (Anṣār) and the Immigrants (Muhājirūn), or after them. In furnishing now a brief analysis of this second part, I should like to submit that its first section is common to both parts, viz. in the event of a war, if Muslims and Jews entered into an agreement of conjoint action, each party should bear its own expenses of war. This provision has not only been set forth in § 24, but has also been repeated in § 37 and 38. Perhaps the rather obscure text of § 45*b* also means the same thing. The text literally translated will read: "for each party its *share* on the

side which faces it". The version of Abū 'Ubaid has the words "*share of expenses*". Most probably the reason for this repetition was that in monetary dealings the Jews of Madīnah had rather a bad name. It was the unsatisfactory manner of their dealings that had drawn such Qur'ānic denunciations as:

> Among the people of the Scripture there is he who, if thou trust him . . . with a *denier* (copper coin), will not return it to thee unless thou keeps standing over him; that is because they say: "We have no duty to the Gentiles"; they speak a lie concerning God knowingly.[23]

When they were responsible for the expenses, it is evident that they had also the right to get a share of the booty, as has been clearly narrated by Abū 'Ubaid in his comment.[24] The Jews had acknowledged the authority of the Prophet, and also acknowledged his decision as final in every matter or dispute, as has been very clearly stated in § 42 of the document. But it strikes one as rather strange that despite § 25, announcing religious freedom and tolerance by the phrase "the Jews following their own faith, and Muslims following their own faith," in this § 42 the Muslim chief has been referred to as "Muḥammad Messenger of God." (This in Ibn Isḥāq's version, and as "Muḥammad the Prophet" in Abū 'Ubaid's version. Again, in § 47 of Ibn Isḥāq's version the phrase "Muḥam-

23. iii. 75.
24. *Kitāb al-Amwāl*, § 517; Suhailīy, *Al-Rawḍ al-Unuf*, II, 17.

mad the Prophet" is repeated, although it has been dropped in Abū 'Ubaid's version.) It does not seem reasonable to ascribe this fact to any possible acceptance by the Jews of the prophethood of Muḥammad. It is safer to conclude that these words are the addition of some respectful scribes of these books of history; for in the version of Ibn Isḥāq in both places the phrase "blessings and peace of God be upon him" have been superadded, and this does not seem probable to have been done under the instructions of the Prophet himself. Or maybe the words *nabīy* (prophet) and *rasūl-allāh* (messenger of God) were written under the instructions of the Prophet himself, and the Jews could not gather courage enough to protest against it—as did the Quraish later at Ḥudaibiyah—in view of the dangerous political and war situation of the time. As for the phrase "blessings and peace of God be upon him," it appears from the *Sīrah* of Ibn Hishām,[25] that the Prophet himself used to employ it for his own self as a kind of prayer in his sermons and other utterances. But leaving aside the incidental discussion, the Jewish tribes have been mentioned in this document, not in the form of Jewish tribes, but as different groups, residing as clients of different Madinite Arab tribes, at least eight out of ten of them; and their rights to equal treatment have been explicitly admitted. The object

25. P. 992, line 3 (European edition).

of this seems to be to emphasise the fact that the Jews did not join this federal City-State of Madīnah as a community, a single unit; and that every clan entered in the pact as a separate unit. The reason seems to have been that they were not the original inhabitants of the locality but had come there later, perhaps as refugees and displaced persons, and settled there as clients (*maulā*, or *jār*) of different Arab tribes. It was due to this fact that when the Muslims went to war against some Jewish tribes, or ordered their expulsion from the city of Madīnah, not only the rest of the tribes remained quiet, but on certain occasions even rendered military help to the Muslims; and this treaty of Constitutional Act was then not considered as repudiated in so far as other Jewish tribes were concerned, but was regarded as still in force. Thus in this document the people of a tribe and its *mawālīy* or clients have been regarded as jointly responsible for the payment of blood-money. The Holy Prophet, after the expulsion of Banū Qainuqā', demanded subscription from Banu'n-Naḍīr on one occasion on the strength of the provision made in § 25 and 31 of the document.[26] The Jews have been given equal political and cultural rights with the Muslims in the clearest terms (§ 25); and the allies of the Jews, who have been variously called

26. Cf. Ibn Hishām, op. cit., p. 652: Ibn Sa'd, op. cit, I/2, pp. 40, 41; Ṭabarī, op. cit, I, pp. 1449-50.

mawālī, *baṭn*, *biṭānah*, have been given equal status with original Jews in general, in the matter of rights and responsibilities (§ 32, 34, 45 and 46). Of course a protected person (*jār*) could not extend his protection to another foreign person, without the permission of the original member of the tribe (§ 41). In reality it was a military alliance, which was made with the Jews. Thus in §§37, 44 and 45 it has been made quite clear that they shall have to fight against all those people against whom the Muslims will have to fight; and shall be in peace with whomsoever the Muslims may be in peace, and shall take an equal part in the defence of Madīnah; and that the Jews shall help the Muslims, were these latter attacked by anyone; and similarly the Muslims shall help the Jews if these latter were attacked by anyone. Of course, the Jews would not be obliged to help the Muslims if the latter were involved in any religious war (§ 45). It was also stipulated that joining the forces with the Muslims in an expedition would have to be with the permission of the Prophet (§ 36*a*). The text of this section is a little obscure in its meaning, and may also yield the sense that the Jews themselves were not to declare war against anyone independently without the permission of the Prophet. If that is so, it may indicate an additional width of political power acquired by the Prophet. It is possible that the Quraish of Mecca were the

people most affected by this important stipulation, as they were deprived of the help of a very important ally, viz., the Jews of Madīnah; for in § 43 of the document it has been clearly laid down that the Jews should not give any protection to the Quraish or the helpers of the Quraish, though unfortunately this stipulation was not honoured in practice, and the Jewish chiefs kept on conspiring with the Quraish; and once these intrigues started after the Battle of Badr, they did not stop till the unconditional surrender of the last of the Jews (the Banū Quraiẓah), as we learn from Ibn Hishām,[27] Ibn Kathīr,[28] and Torrey.[29] In any case, peace and war have been regarded as an undisputed central subject of this Federation. The military command of war was also obtained by the Prophet, which was a great political success for him. The Prophet did not at all interfere in the social and internal affairs of his subjects. Institutions like ransom, blood-money, asylum or quarter, naturalisation (membership of a tribe by treaty agreement) and other customs were left untouched (§ 25, 31 and 40). The result of this wise political step was that no one felt the least hesitation or embarrassment; and the Jews gladly agreed that the Prophet should discharge the functions of the final

27. P. 681.
28. *Bidāyah*, iv. 6.
29. *Jewish Foundation of Islam*, p. 130.

court of appeal, even for themselves (§ 42). From the record of precedents, it appears that in the case of Jews, the Prophet used to give judgement according to their personal, Biblical law. Like the question of peace and war, the administration of justice to Jews concerning the cases of conflict of Laws (when the parties belonged to different tribes or different political groups) also was clearly held up as a central subject. Considerations of relationship, etc., were absolutely disallowed for interference in matters of justice. The endless chain of vendetta or retaliations and counter-retaliations of olden times was completely put an end to. The acquisition by the Prophet of the supreme judicial authority over the Jews was an additional major political victory for the Muslims. The Jews not only acceepted the Prophet of Islam as their sovereign, but also agreed to regard the city of Madīnah, together with the appurtenant regions, as a sacred territory (§ 39). Mecca was already a sacred land; the sanctity of Ṭā'if was recognised and maintained in the treaty of Ṭā'if in the year 9 of Hijrah.[30] In fact, it was one of the political achievements of the Prophet to have a semi-Arab city like Madīnah recognised by the Jews as a sacred territory. Thus a small town, with some twenty wards in it, was organised into a City-State; and its small, yet heterogeneuos, population was united round one central,

30. Cf. Abū 'Ubaid, op. cit., § 506.

elastic and practicable constitution. With the collaboration of all, a polical system was inaugurated in Madīnah, which made that city in later times the metropolis of an extensive and powerful empire extending over three continents of Asia, Africa and Europe, without any difficulty and without any abrogation of this original Constitutional Act. There should be no surprise at my referring to the continent of Europe as well. Long before the days of the Umaiyad caliphs, in the time of the third Rāshidūn caliph 'Uthmān, in the Hijrī year 27 (647-8 of the Christian era), Muslim armies actully marched into Spain. In spite of lack of reinforcements, they settled down in that country and remained in possession of a part of it till, after several scores of years, Ṭāriq arrived on the scene and completed the conquest. This event of the reign of 'Uthmān has been mentioned by Ṭabarīy and Balādhurī[31] as well as by Gibbon.[32] Everybody knows that up to the time of 'Uthmān, Madīnah did remain the headquarters of the caliphate.

(26) There is also the use of the word *dīn* in this document. This Arabic word simultaneously stands for *religion* and *government* both. It is a fact of such great importance that if we lose sight of it we shall fail to understand the religion and

31. Op. cit., I, p. 2817. Balādhurī, *Futūḥ*, p. 408. Also by other sources.

32. *Decline and Fall of the Roman Empire*, G.U.P., Vol. 5, p. 555.

politics of Islam in a proper way.

(27) In § 25 there is mention of what has been interpreted recently by some[33] as a recognition of composite Judeo-Muslim nationality by Islam. There is hardly any justification for it, it being simply a recognition of the fact that the Jews too believe in God or are monotheists. (See also below, translation of the Document, footnote to § 25.)

(28) The perusal of the whole constitution will reveal that a federation—or rather confederation—of the Muslims and non-Muslims of Madīnah was established for political reasons. Although Jews were given internal autonomy, they did not share in the foreign policy of the newly constituted City-State, in spite of the fact that the Jews formed the second largest single community on the arrival of the Prophet in Madīnah. The Jews could not declare or wage war independently, nor could they join city-militia without the permission of the Prophet, who was also their supreme court of appeal.

Authenticity

(29) It would not be out of place to add a few words on the authenticity of this document.

(30) Some Muḥaddiths have suggested that,

33. Ḥifẓur-Raḥmān, in Urdu, in the *Durūd* of Delhi, October 1939 ff. cf. below our Bibliography.

since the ultimate source, Ibn Isḥāq, does not give the chain of his narrators, it cannot be accepted as a report capable of being authenticated. This is not wholly true. Ibn Zanjueh quotes it from az-Zuhrīy; Ibn Saiyid an-Nās copies it from Ibn Abī Khaithamah. Parts of the clauses are recorded by all the best Muḥaddiths, such as Bukhārīy, Muslim, etc. (cf. § 37 below) Bukhārīy (96/17, No. 18) having even recorded from Anas, personal servant of the Prophet, that it was in the house of his parents that this document was drawn up. (This last detail implies perhaps that the document dates from a time before the construction of the Mosque of the Prophet at Madīnah.) The cumulated effect of all these is overwhelming.

(31) Ibn Ḥajar is reluctant to subscribe to its impeccable authenticity, but he gives no reasons. Apparently he was shocked to read in § 25 that the Jews are declared to be "a community of Believers"—we shall revert to it—but why astonish? The Jews are certainly monotheists, and believe in One God, as do the Muslims.

(32) As against these objections, the diction is very old, almost in archaic Arabic. There is spontaneity and directness, and no traces of artificiality of later generations in the style.

(33) Al-Maqrīzīy reports that this document was later found attached to the sword of the Pro-

phet. This sword was inherited by his son-in-law and nephew, 'Alī. No doubt it was from this document that he had read portions to his audience later in Kūfah, as we read in the traditions referred to in our Bibliography under the caption "Extracts of the Document".

(34) Finally, there is nothing in the document which could be considered as contrary to the general policy of Islam, nothing impossible, and nothing out of harmony with the life and work of the Prophet of Islam.

(35) TRANSLATION OF THE TEXT OF THE CONSTITUTION

With the name of God, the Most Merciful, the All-Merciful

1. This is a prescript (*kitāb*) of Muḥammad, the Prophet [the Messenger of God[1]] to operate among the Faithful Believers (*mū'minīn*) and the Submissive to God (*muslimīn*) from among the Quraish and [the people of[2]] Yathrib and those who may be under them and join them,[3] and take part in wars in their company.

2. Verily they constitute a political unit (*ummah*) as distinct from all the people (of the world).

3. The Emigrants from among the Quraish shall be (responsible) for their ward (*rab'ah*); and shall pay[4] their blood-money in mutual collaboration, and shall secure the release of their prisoners by paying their ransom themselves, so that the

1. & 2. Added from Abū 'Ubaid.

3. "Under them", *tabi'a*, may also be rendered as "follow them." Instead of *join*, Abū 'Ubaid's version is: "settle among".

4. Abū 'Ubaid adds: "as heretofore". But that is the mistake of the copyist.

mutual dealings between the Believers[5] be in accordance with the principles of recognised goodness (*ma'rūf*) and justice.

4. And the Banū 'Awf shall be responsible for their ward, and shall pay their blood-money in mutual collaboration as heretofore; and every group[6] shall secure the release of its own prisoners by paying their ransom themselves, so that the dealings between the Believers be in accordance with the principles of recognised goodness and justice.

5. And the Banu'l-Ḥārith[7] shall be responsible for their ward, and shall pay their blood-money in mutual collaboration as heretofore; and every group[8] shall secure the release of its own prisoners by paying their ransom themselves, so that the dealings between the Believers be in accordance with the principles of recognised goodness and justice.

6. And the Banū Sā'idah shall be responsible for their ward, and shall pay their blood-money in mutual collaboration as heretofore; and every

5. Abū 'Ubaid adds: "and the Submissive".
6. Abū 'Ubaid adds: "of them".
7. Abū 'Ubaid adds: "of the Khazrajites".
8. Abū 'Ubaid adds: "of them".

group[9] shall secure the release of its own prisoners by paying their ransom themselves, so that the dealings between the Believers be in accordance with the principles of recognised goodness and justice.

7. And the Banū Jusham shall be responsible for their ward, and shall pay their blood-money in mutual collaboration as heretofore; and every group[10] shall secure the release of its own prisoners by paying their ransom themselves, so that the dealings between the Believers be in accordance with the principles of recognised goodness and justice.

8. And the Banu'n-Najjār shall be responsible for their ward, and shall pay their blood-money in mutual collaboration as heretofore; and every group[11] shall secure the release of its own prisoners by paying their ransom themselves, so that the dealings between the Believers be in accordance with the principles of recognised goodness and justice.

9. And the Banū 'Amr ibn 'Awf shall be responsible for their ward, and shall pay their blood-money in mutual collaboration as heretofore;

9-11. Abū 'Ubaid adds: "of them".

and every group[12] shall secure the release of its own prisoners by paying their ransom themselves, so that the dealings between the Believers be in accordance with the principles of recognised goodness and justice.

10. And the Banu'n-Nabīt shall be responsible for their ward, and shall pay their blood-money in mutual collaboration as heretofore; and every group[13] shall secure the release of its own prisoners by paying their ransom themselves, so that the dealings between the Believers be in accordance with the principles of recognised goodness and justice.

11. And the Banu'l-Aws shall be responsible for their ward, and shall pay their blood-money in mutual collaboration as heretofore; and every group[14] shall secure the release of its own prisoners by paying their ransom themselves, so that the dealings between the Believers be in accordance with the principles of recognised goodness and justice.

12/*a*. And verily the Believers shall not leave anyone hard pressed with debts, without helping[15]

12-14. Abū 'Ubaid adds: "of them".

15. So according to Abū 'Ubaid; in Ibn Hishām: "giving" (i.e. the requisite).

him in recognised goodness with regard to ransom or blood-money.

12/*b*. And no Believer shall oppose the client of another Believer against him (i.e. this latter).[16]

13. And verily the [hands of[17]] pious Believers shall be raised against [every[18]] such person as rises in rebellion or[19] attempts to acquire anything by force, or is guilty of any violation of pledge or excess or attempts to spread mischief among the Believers ; and verily their hands shall rise all together against such a person, even if he be son of anyone of them.

14. And[20] no Believer kills (*yaqtulu*) another Believer in retaliation for an unbeliever (*kāfir*), nor helps (*yanṣuru*) an unbeliever against a Believer.

16. So according to Ibn Hishām : missing in Abū 'Ubaid. The following isolated report of Ibn Ḥanbal (iii : 342) may be a variant of the [illegible] clause : Jābir says : the Messenger of God prescribed for each clan its blood-money, and then wrote : Verily it is not permitted that a contract of clientage of a Muslim individual should be entered into without the permission of his patron (*walī*)." Maybe the word *yukhālifu* (oppose) by Ibn Hishām is to read *yuḥālifu* (enter into contract).

17. Abū 'Ubaid adds this.

18. Abū 'Ubaid adds this.

19. In Ibn Hishām : "or" ; and in Abū 'Ubaid : "and".

20. Abū 'Ubaid omits the word "and".

15. And verily the protection (*dhimmah*) of God is one; the humblest (*adnā*) of them (i.e. of the Believers) can, by extending his protection to anyone, put the obligation on all of them;[21] and verily the Believers are brethren to one another (*mawālī*) as against all the people (of the world).

16. And verily those who will obey us from among the Jews will have help[22] and equality; neither shall they be oppressed nor shall any help be given against them.

17. And verily the peace of the Believers shall be one; [and[23]] if there be any war in the path of God, no Believer shall make any peace (with the enemy) apart from other Believers, unless it (i.e. this peace) be the same and equally binding on all.

18. And verily every detachment that will fight on our side will be relieved by turns.

19. And verily the Believers as a body shall take vengeance for each other of the bloodshed in the path of God.[24]

21. Abū 'Ubaid omits the first part of the clause.

22. In Ibn Hishām; "help" (*naṣr*); in Abū 'Ubaid: "recognised goodness" (*ma'rūf*).

23. Abū 'Ubaid adds this word.

24. Abū 'Ubaid omits the entire clause.

20/*a*. And undoubtedly the pious Believers are the followers of the best and the straightest guidance.

20/*b*. And no Polytheist (*mushrik* Arab subject) gives any protection to property and to life of any Quraishite, nor he comes in the way of[25] any Believer in this matter.

21. And verily if anyone intentionally murders a Believer and it is proved, he shall be killed in retaliation, unless the heirs of the murdered person agree [to blood-money[26]]; and verily all the Believers shall actually stand for this, and nothing else shall be lawful for them to do.[27]

22. And verily it is not be lawful for any Believer, who has accepted the contents of this document (*ṣaḥīfah*) and has faith in God and in the Last Day, to give help or protection to any murderer (*muḥdith*[28]); and verily whoever gives help or protection to such a person, God's curse

25. In Abū 'Ubaid : "he helps against".

26. Added from Abū 'Ubaid's version.

27. The phrase : "and nothing . . . to do" is omitted by Abū 'Ubaid.

28. For this sense of the word *muḥdith*, see Ibn Hishām, pp. 344 and 690-1 ; Balādhurī, *Futūḥ*, p. 173, among others. Cf. also § 42 below.

and wrath shall be on him on [29] the Day of Resurrection, and no expense or compensation will be accepted from him (i.e from the protector of the murderer to exonerate him).

23. And whenever ye differ about anything, its reference[30] shall be to God and to Muḥammad.[31]

24. And verily the Jews bear (their) expenditure along with the Believers so long as they fight in conjunction.

25. And verily the Jews of the Banū 'Awf[32] shall be considered as a community (*ummah*) along with[33] the Believers, for the Jews being their religion and for the Muslims[34] their religion, be

29. In Abū 'Ubaid : "till the day".

30. *Maraddahu* ; Abū 'Ubaid : "its decision" *ḥukmahu*.

31. Abū 'Ubaid : "the Messenger may God incline to him and protect."

32. Abū 'Ubaid adds : "and their clients and their original members." Note that these words come later in this clause, where Abū 'Ubaid has omitted them.

33. So in Ibn Isḥāq (Ibn Hishām) : "along with" (*ma'a*) : in Abū 'Ubaid : "of" (*min*) It may not be out of place to add that Ibn Ḥajar has attacked one of the narrators of the text cited by Ibn Isḥāq, saying that he invented things. He gives no other details to justify his accusation. It would be permissible to suppose that Ibn Ḥajar was shocked by this phrase, which says that the Jews form a community along with the Believers (i.e. Muslims), or even a community forming part of the Believers. But as we have suggested above, the clause in its most "shocking" form means nothing more than this that the Jews are also believers in God, monotheists. So there is nothing therein for a pious Muslim to be shocked at.

34. Abū 'Ubaid : "for the Believers".

one client or original member of the tribe; but whosoever shall be guilty of oppression or[35] violation (of treaty), shall put to trouble none but his own person and the members of his house (*ahl-bait*).

26. And verily the Jews of the Banu'n-Najjār shall have the same rights as the Jews of the Banu 'Awf.

27. And verily the Jews of the Banu'l-Ḥārith shall have the same rights as the Jews of the Banu 'Awf.

28. And verily the Jews of the Banū Sā'idah[36] shall have the same rights as the Jews of the Banū 'Awf.

29. And verily the Jews of the Banū Jusham[37] shall have the same rights as the Jews of the Banu 'Awf.

30. And verily the Jews of the Banu'l-Aws[38] shall have the same rights as the Jews of the Banu 'Awf.

31. And verily the Jews of the Banu Tha'labah shall have the same rights as the Jews of

35. Abū 'Ubaid : "and".
36. Abū 'Ubaid : "Banū Jusham" ; cf. next footnote.
37. Abū 'Ubaid : "Banū Sā'diyah" ; cf foregoing footnote.
38 Abū 'Ubaid : "Jews of al-Aws".

the Banū 'Awf[39]; but whosoever is guilty of oppression and violation of treaty puts to trouble none but his own person and the members of his house.

32. And verily the Jafnah is a branch of the (tribe of) Tha'labah, even like them.[40]

33. And verily the Banu'sh-Shuṭaibah shall have the same rights as the Jews of the Banū Awf; and verily there shall be fulfilment and not violation.[41]

34. And verily the client of the Tha'labah shall have the same rights as the original members.[42]

35. And verily the sub-branches (*biṭānah*) of the Jews shall have the same rights as the principal members.[43]

36/*a*. And verily none of them goes out (on a military expedition) except with the permission of Muḥammad.

36/*b*. And verily no obstruction shall be placed in the way of (anyone's) retaliation of a wound; and whosoever sheds blood shall be personally responsible for it together with the

39. The whole clause up to this word is omitted by Abū 'Ubaid.
40 43. All these clauses are missing in Abū 'Ubaid.

members of his house, or else (i.e. to do otherwise) it will be injustice; and verily God is along with those who observe this most scrupulously.[44]

37/*a*. And verily the Jews shall bear their expenses (of war) and the Muslims shall bear their expenses; and verily there shall be aid between them as against[45] those who fight the parties (*ahl*) to this document (*ṣaḥīfah*), and here shall be sincere counsel and well-wishing between them; and there shall be fulfilment (of pledge) and not violation.

37/*b*. And verily no one violates the pledge of his ally (*ḥalīf*); and verily help[46] shall be given in favour of the oppressed.

38. And verily the Jews bear (their) expenditure along with the Believers so long as they fight in conjunction.[47]

39. And verily the valley (*jawf*) of Yathrib[48] shall constitute an inviolable territory[49] for the

44. Clause missing in Abū 'Ubaid.

45. The first part is missing in Abū 'Ubaid, which begins: there shall be aid against," etc.

46. Abū 'Ubaid: "and between them good counsel and help," etc.

47. Clause missing in Abū 'Ubaid: in fact a repetition of § 24 above.

48. Abū 'Ubaid: "Madīnah".

49. "Ḥaram" by Abū 'Ubaid; and "ḥarām" by Ibn Hishām.

parties to this document (*ṣaḥīfah*).

40. And verily the protected person (*jār*) shall be considered just like the original member (i.e. who has given protection); neither shall he (the protected person) be harmed, nor shall he himself violate the pledge.[50]

41. And verily no refuge will be given (i.e. by the protected person to others) without the permission of the original people of the place.[51]

42. And verily if any murder (*ḥadath*) or quarrel[52] takes place between the parties to this document (*ṣaḥīfah*), from which any trouble may be feared, it shall be referred to God and to Muḥammad, Messenger of God, may God incline to him and protect;[53] and verily God is the guarantee of the most faithful scrupulous observance of the contents of this document.

43. And verily the Quraish shall be given no protection nor those who help them.[54]

44. And verily there shall be aid between them (i.e. the Muslims and the Jews) against those who invade Yathrib.[55]

50 & 51. Clauses missing in Abū 'Ubaid.
52. The words "or quarrel" missing in Abū 'Ubaid.
53. Abū 'Ubaid : "to Muḥammad the prophet" only ; the rest of the clause is missing.
54 & 55 Clauses missing in Abū 'Ubaid.

45/*a*. And if they (i.e. the Jews) are invited to a peace to participate in and to adhere to it, they participate in and adhere to it; and verily if they invite likewise, the same shall be incumbent upon the Believers in their favour, excepting one who fights for the cause of religion.[56]

45/*b*. On every group shall rest the responsibility for the part[57] [of the city?] which faces them.

46. And the Jews of al-Aws, clients as well as original members, shall have the same rights as the parties to this document (*ṣaḥīfah*), with the purest fulfilment with regard to the parties to this document; and verily there shall be fulfilment and not violation;[58] no evil-doer earns anything except against his own self; and verily God is the guarantee of the most truthful and most scrupulous observance of the contents of this

56. Abū 'Ubaid: "If they [the Muslims] ask the Jews to make peace with any ally of theirs, they shall make peace with him; and if they ask us for a similar thing, the same shall be incumbent upon the Believers, except one who fights for the cause of religion."

57. Abū 'Ubaid: "part of expenditure"; he omits the rest of the clause.

58. Abū 'Ubaid: "And the Jews of al-Aws and the clients and the original members shall have the best fulfilment from the parties to this document; and verily the Banu'sh Shuṭaibah are a branch (baṭn) of the Jafnah; and verily there shall be fulfilment and not violation, therefore no evil-doer," etc. cf. § 32.

document.

47. And verily this prescript (*kitāb*) shall not protect any oppressor or violator of pledge; and verily whoever goes out (on a military expedition) shall have security, and whoever stays in Madīnah shall have security, except onewho commits oppression and violation of the pledge; and verily God is the protector of those who fulfil and observe the pledge scrupulously, even as Muḥammad, Messenger of God—may God incline to and protect him—is (i.e. the protector).[59]

59. Abū 'Ubaid, instead of the last phrase "God is protector," etc., gives the following version: "the most fitting to be the parties to this document are those who observe it with scruple and equity"

نص دستور الدولة الاسلامية فى العصر النبوى (36)

بسم الله الرحمن الرحيم

(١) هذا كتاب من محمد النبى [رسول الله] بين المؤمنين والمسلمين من قريش و[أهل] يثرب و من تبعهم فلحق بهم و جاهد معهم.

(٢) انهم أمة واحدة من دون الناس.

(٣) المهاجرون من قريش على ربعتهم يتعاقلون بينهم و هم يفدون عانيهم بالمعرف والقسط بين المؤمنين.

(٤) و بنو عوف على ربعتهم يتعاقلون معاقلهم الاولى ، و كل

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(١) مابين القوسين زاده أبوعبيد و ابن زنجويه و آخر المادة عندهما : ''تبعهم فحل معهم و جاهد''.

(٢) كلمة ''من'' ليست عند أبى عبيد و ابن زنجويه.

(٣) عند أبى عبيد و ابن زنجويه : ''على رباعتهم—(وفى رواية : ربعاتهم)-- يتعاقلون بينهم معاقلهم الاولى وهم''

(٤-١١) أبو عبيد : ''على رباعتهم'' ، ''طائفة منهم تفدى''

طائفة تفدى عانيها بالمعروف والقسط بين المؤمنين.

(٥) و بنو الحارث [بن الخزرج] على ربعتهم يتعاقلون معاقلهم الاولى. و كل طائفة تفدى عانيها بالمعروف والقسط بين المؤمنين.

(٦) و بنو ساعدة على ربعتهم يتعاقلون معاقلهم الاولى. و كل طائفة تفدى عانيها بالمعروف والقسط بين المؤمنين.

(٧) و بنو جشم على ربعتهم يتعاقلون معاقلهم الاولى. وكل طائفة تفدى عانيها بالمعروف والقسط بين المؤمنين.

(٨) و بنو النجار على ربعتهم يتعاقلون معاقلهم الاولى. و كل طائفة تفدى عانيها بالمعروف والقسط بين المؤمنين.

(٩) وبنو عمرو بن عوف على ربعتهم يتعاقلون معاقلهم الاولى. و كل طائفة تفدى عانيها بالمعروف والقسط بين المؤمنين.

(١٠) و بنو النبيت على ربعتهم يتعاقلون معاقلهم الاولى. وكل طائفة تفدى عانيها بالمعروف والقسط بين المؤمنين.

(١١) و بنو الاوس على ربعتهم يتعاقلون معاقلهم الاولى- وكل طائفة تفدى عانيها بالمعروف والقسط بين المؤمنين.

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(٥) مابين القوسين زاده أبوعبيد.

(١٢/الف) و ان المؤمنين لا يتر كون مفرحا بينهم أن يعطمو بالمعروف فى فداء أو عقل.

(١٢/ب) و ان لا يخالف مؤمن مولى مؤمن دونه.

(١٣) و أن المؤمنين المتقين [أيديهم] على [كل] من بغى منهم، أو ابتغى دسيعة ظلم، أو اثما، أو عدوانا، أو فسادا بين المؤمنين. و ان أيديهم عليه جميعا ولو كان ولد أحدهم.

(١٢/الف) ابن هشام فى نسخة "مفرجا" (بالجيم بدل الحاء). و عند أبى عبيد: "مفرحا منهم أن يعينوه". ابن زنجويه و أبو عبيد فى رواية: مفدوحا.

(١٢/ب) لا يوجد هذه المادة عند أبى عبيد. و عند ابن هشام طبعة بولاق: "يحالف" (بالحاء المهلة). و فى مسند أحمد بن حنبل، ج ٣، ص ٣٣٢، من الطبعة الاولى: "عن جابر كتب رسول الله صلى الله عليه وسلم على كل بطن عقولهم، ثم كتب: انه لا يحل أن يتولى مولى رجل مسلم بغير اذن وليه".

(١٣) مابين القوسين زاده أبو عبيد. و عنده أيضا: "من بغى و ابتغى منهم دسيعة". "اثما أو عدوانا أو فسادا"، كذا فى الترجمة الفارسية لسيرة ابن اسحاق، أما ابن هشام و أبو عبيد فالنص عندهما: "اثم أو عدوان أو فساد".

(١٣) ولا يقتل مؤمن مؤمنا فى كافر،ولا ينصر كافرا على مؤمن.

(١٥) و ان ذمة الله واحدة يجير عليهم أدناهم. وان المؤمنين بعضهم موالى بعض دون الناس.

(١٦) وانه من تبعنا من يهود فان له النصر والأسوة غير مظلومين ولا متناصر عليهم.

(١٧) وان سلم المؤمنين واحدة، لا يسالم مؤمن دون مومن فى قتال فى سبيل الله الا على سواء و عدل بينهم.

(١٨) و ان كل غازية غزت معنا يعقب بعضها بعضا.

(١٩) و ان المؤمنين يبيء بعضهم عن بعض بما نال دماؤهم فى سبيل الله.

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(١٣) عند أبى عبيد ''لا يقتل '' بدل ''ولا يقتل''.

(١٥) النصف الاول من المادة ليس عند أبى عبيد، وتبتدى عنده : ''والمؤمون بعضهم'' الخ.

(١٦) أبو عبيد : ''من اليهود فان له المعروف والاسوة''.

(١٧) أبو عبيد : ''واحد ولا يسالم''.

(١٨) كلمة ''معنا'' ليست عند أبى عبيد.

(١٩) لا يوجد هذه المادة عند أبى عبيد.

(٢٠/الف) وان المؤمنين المتقين على أحسن هدى وأقومه.

(٢٠/ب) و انه لا يجير مشرك مالا لقريش ولا نفسا،ولايحول دونه على مؤمن.

(٢١) و انه من اعتبط مؤمنا قتلا عن بينة فانه قود به الا أن يرضى ولى المقتول [بالعقل]. و ان المؤمنين عليه كافة ولا يحل لهم الا قيام عليه.

(٢٢) وانه لا يحل لمؤمن أقر بما فى هذه الصحيفة و آمن بالله

(٢٠/الف) أبو عبيد : ''هذا'' بدل ''هدى''.

(٢٠/ب) النصف الاخير من المادة عند أبى عبيد : ''لقريش ولا يعينها على مؤمن''.

(٢١) مابين القوسين زاده أبو عبيد و لكن حذف الكلمات ''عن بينة''، ''به'' ''ولا يحل لهم الا قيام عليه''.

(٢٢) ''أوبؤويه''،كذا عند أبى عبيد ؛ وعند ابن هشام ''ويؤويه''. و عند أبى عبيد ''فمن'' بدل ''و ان من''. و كذلك عنده ''الى يوم القيامة''.

واليوم الآخر أن ينصر محدثا أو يؤويه. و ان من نصره أو آواه، فان عليه لعنة الله و غضبه يوم القيامة، ولا يؤخذ منه صرف ولا عدل.

(٢٣) وانكم مهما اختلفتم فيه من شئ، فان مرده الى الله و الى محمد.

(٢٤) و ان اليهود ينفقون مع المؤمنين ما داموا محاربين.

(٢٥) و ان يهود بنى عوف امة مع المؤمنين، لليهود دينهم و للمسلمين دينهم، مواليهم و أنفسهم الا من ظلم و أثم فانه لا يوتغ الا نفسه و أهل بيته.

(٢٦) و ان ليهود بنى النجار مثل ما ليهود بنى عوف.

(٢٧) و ان ليهود بنى الحارث مثل ما ليهود بنى عوف.

(٢٨) و ان ليهود بنى ساعدة مثل ما ليهود بنى عوف.

(٢٩) و ان ليهود بنى جشم مثل ما ليهود بنى عوف.

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(٢٣) أبو عبيد: "و انكم ما اختلفتم فيه من شئ فان حكمه الى الله تبارك و تعالى و الى الرسول صلى الله عليه وسلم".

(٢٤) أبو عبيد: "بنى عوف مواليهم و أنفسهم امة من المؤمنين. لليهود دينهم وللمؤمنين دينهم الا من ظلم" الخ.

(٢٨-٢٩) عند أبى عبيد ٢٨-٢٩ (مع تقديم و تاخير).

(٣٠) و ان ليهود بنى الاوس مثل ما ليهود بنى عوف.

(٣١) و ان ليهود بنى ثعلبة مثل ما ليهود بنى عوف، الا من ظلم و أثم فانه لا يوتغ الا نفسه و أهل بيته.

(٣٢) و ان جفنة بطن من ثعلبة كأنفسهم.

(٣٣) و ان لبنى الشطيبة مثل ما ليهود بنى عوف. و ان البر دون الاثم

(٣٤) و ان موالى ثعلبة كأنفسهم.

(٣٥) و ان بطانة يهود كأنفسهم.

(٣٦/الف) و انه لا يخرج منهم أحد الا باذن محمد.

(٣٦/ب) و انه لا ينحجز على ثأر جرح. و انه من فتك فبنفسه و أهل بيته، الا من ظلم. و ان الله على أبر هذا.

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(٣٠) أبو عبيد: ''ليهود الأوس''.

(٣١) أول المادة ليس عند أبى عبيد بل تبتدى من كلمة ''الا من ظلم'' الخ.

(٣٢-٣٥) هذه المواد لا توجدُ عند أبى عبيد، و لكن راجع حاشية المادة ٣٦.

(٣٦/الف) أبو عبيد: ''أحد منهم'' (مع تقديم و تأخير).

(٣٦/ب) هذه المادة ليست عند أبى عبيد.

(٣٧) و ان على اليهود نفقتهم و على المسلمين نفقتهم . وان بينهم النصر على من حارب أهل هذه الصحيفة . و ان بينهم النصح و النصيحة والبر دون الاثم .

(٣٧/ب) و انه لا يأثم امرؤ بحليفة . و ان النصر للمظلوم .

(٣٨) و ان اليهود ينفقون مع المؤمنين ما داموا محاربين .

(٣٩) و ان يثرب حرام جوفها لأهل هذه الصحيفة .

(٤٠) و ان الجار كالنفس غير مضار ولا آثم .

(٤١) و انه لا تجار حرمة الا باذن أهلها .

(٤٢) و انه ما كان بين أهل هذه الصحيفة من حدث أو اشتجار يخاف فساده، فان مرده الى الله و الى محمد رسول الله صلى الله عليه وسلم .

(٣٧/الف - ٣٧/ب) أبو عبيد : "و ان بينهم النصر على من حارب أهل هذه الصحيفة و ان بينهم النصيحة والنصر للمظلوم" .

(٣٨) هذه المادة ليست عند أبي عبيد ، و هي تكرار المادة ٢٥ ، راجع أيضا المادة ٣٧ .

(٣٩) أبو عبيد : "و ان المدينة جوفها حرام لا هل" الخ .

(٤٠-٤١) ليستا عند أبي عبيد .

(٤٢) حذف أبو عبيد الكلمات "أو اشتجار" . والباقي عنده : فساده فان أمره الى الله و الى محمد النبي" ؛ ثم حذف الباقي .

و ان الله على أتقى ما فى هذه الصحيفة و أبره.

(٤٣) و انه لا تجار قريش ولا من نصرها.

(٤٤) و ان بينهم النصر على من دهم يثرب.

(٤٥/الف) و اذا دعوا الى صلح يصالحونه و يلبسونه، فانهم يصالحونه و يلبسونه. و انهم اذا دعوا الى مثل ذلک، فانه لهم على المؤمنين الا من حارب فى الدين.

(٤٥/ب) على كل اناس حصتهم من جانبهم الذى قبلهم.

(٤٦) و ان يهود الأوس مواليهم و أنفسهم على مثل ما لأهل هذه الصحيفة مع البر المحض من أهل هذه الصحيفة. و ان البر دون

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(٤٣) ليست عند أبى عبيد.

(٤٥/الف) أبو عبيد: ''و انهم اذا دعوا الى صلح حليف لهم (؟ لنا) فانهم يصالحونه. و ان دعونا الى مثل ذلک فانه لهم على المومنين الا من حارب الدين.

(٤٥/ب) أبو عبيد: ''من النفقة'' بدل ''من جانبهم الذى قبلهم'' و راجع حاشية المادة ٣٨.

(٤٦) أبو عبيد: ''و ان يهود الأوس و مواليهم و انفسم مع البر المحسن من أهل هذه الصحيفة. و ان بنى الشطيبة بطن من جفنة و ان البر دون الاثم فلا يكسب كاسب الا عن نفسه'' الخ.

الاثم. لا يكسب كاسب الا على نفسه. وان الله على اصدق ما فى هذه الصحيفة و أبره.

(٣٧) و انه لايحول هذا الكتاب دون ظالم أو آثم. و انه من خرج آمن، و من قعد آمن بالمدينة، الا من ظلم و أثم. و ان الله لجار لمن بر و اتقى، و محمد رسول الله صلى الله عليه وسلم.

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(٣٧) أبو عبيد: "لايحول الكتاب دون ظالم ولا آثم و انه من خرج آمن و من قعد آمن الا من ظلم و أثم و ان أولاهم بهذه الصحيفة البر المحسن".

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INDEX

References are to paragraphs, not to pages

'Abdullāh ibn Ubaiy ibn Salūl, 10
Abū Dāwūd, imām, 18
Abū Ḥanīfah, imām, 22
Abū 'Ubaid, 3, 25 thrice
Abū Ya'lā, Foreword
adnā, 35/15
"advice-books," to princes, 2
Africa, 25
al-Aḥkām as-Sulṭāniyah, Foreword
ahl bait, 35/25
'Alī, 30
anarchy, 10
Anas, personal servant of the Prophet, 30
Anṣār (Medinite Helpers), 17, 25
'Aqabah, Pact (*bai'ah*) of, 11, 13
Arabia, 13 twice
Arabs, 10, 17, 23, 24
'arif, 21
Aristotle, Foreword, 2
Army, 10
Artha Sastra, Foreword, 2
Asia, 25
asylum, 25
Athens, Foreword, 2
al-Aws, 10, 35/46

Badr, Battle of, 18 twice, 21, 25
Banū 'Amr ibn 'Awf, 35/9
Banū 'Awf, 35/4, 35/26, 35/33
Banū Damrah, 18
Banū Jusham, 35/7, 35/29
Banu'l-Aws, 35/11, 35/26
Banu'l Ḥārith, 35/5,
Banu'n-Nabīt, 35/10
Banu'n-Naḍīr, 10, 21, 25
Banu'n-Najjār, 35/8, 35/26
Banū Qainuqā, 10, 25
Banū Quraiẓah, 10, 25
Banū Sā'idah, 35/6, 35/28
Banu'sh-Shuṭaibah, 35/33
Banū Tha'labah, 35/31, 35/34
baṭn, 25
Believers, 35/1 to 45 frequently
belligerency, 21
bible, 1
Biblical law, 25
biṭānah, 25, 35/35
bloody-money, 21, 23, 25 twice, 35/3-12 *a*, 2
bloodshed, 35/19
booty, 25
Buhl, 4
Bukhārīy, 10, 21, 30

Caetani, 4
caliphate, 25
capital punishment, 22; option of reprieving and accepting blood-money, 21
Chandragupta, Foreword
Chingiz Khān, 1
Christians, European, 4, judeo-Christian
citizenship, right of, 17
City-States, 2
Communes, 21
Companions, 7
Confucius, 1
constitutional law, Foreword
constitution-making, Foreword
Constitution of Athens, Foreword

Day of Resurrection, 23, 35/21
Day of the Last Judgment, 23
dhimmah, 35/15
dīn, 26

Egypt, 2
Emigrants, 35/1; *see also* Muhājirūn
Europe, 25

favouritism, 22
Foreign Affairs, 10
fraternity, legal bond of, 22

Gentiles, 25
Ghiyāth al-Umam, Foreword
Gibbon, 25
goodness, principle of recognised, 35/3-12
government, rules for, 2
Grimme, 4

ḥadath, 35/42
Hajj, 7, 13
ḥakam, 17
ḥalīf, 35/37-*b*
Helpers, 17 twice, 22, 25; *see also* Anṣār
Hobbes, 13
Ḥudaibīyah 25

Ibn Abī Khaithamah, 30
Ibn Hajar, 31
Ibn Ḥanbal, 22
Ibn Hishām, 10, 25 twice
Ibn Isḥāq 3, 25 twice, 30
Ibn Kathīr, 25
Ibn Saiyid an-Nās, 30
Ibn Zanjueh, 30
Idolaters, 17
ideology, identity of, 22
Immigrants, 25; *see also* Emigrants, Muhājirūn
India, 2
Iranian empire, 7
Islam, 11, 27, 34; history of the constitutional law in, cf. Foreword
Istanbul, University of, cf. Foreword

Jafnah, the, 35/32
jār, 35/40
jawf, 35/39
Jews, 9, 10, 17, 18, 19, 21, 23, 24, 25 many a time, 27, 35/16, 35/24-38, 35/44, 35/45-a, 35/46; declared "a community of Believers," 27, 31; given equal political and cultural rights with the Muslims, 25
Juhainah, 18
Justice, 35/4-11; administration of, 1, 10, 22, 25; the right of seeking, 22
Juwainī, Imām al-Ḥaramain, cf. Foreword

kāfir, 35-14
kāhin, 17
Kautilya, Foreword, 2
Khazraj, 10
"king can do no wrong," Islam rejects, 13
king, duties of a, 2
kitāb, 12, 13, 35/47
Kūfah, 31
kutiba, 13

Last Day, 22; *see also* Day of Resurrection and Day of the Last Judgment
law and justice, 22
Lisān al-'Arab, 18

Madīnah, 7, 9, 10, 11, 12, 13, 17,

18, 20, 22, 24, 25 several times, 28, 30, 35/47; Jewish tribes of, 17; migration to, 10; *see also* Yathrib
Manu Smirti, 2
al-Maqrisiy, 33
ma'rūf, 35/3
materialism, 13
mawāli, 22, 25, 35/15
Māwardīy, cf. Foreword
mawlā, 22
Mecca, 6, 8, 9, 10, 11, 17, 20, 25 twice
Meccans, 9
military alliance, 25
Mosque of the Prophet, 30
Mueller, 4
Muḥadditha, 30
Muhājirūn (Meccan refugees), 17, 25; *see also* Immigrants, Emigrants
Muhammad, 2, 21, 25, 35/1, 35/23, 35/26, 35/42
mū'minin, 35/1
muslimin, 35/1
muḥdith, 35/22
mushrik, 35/20-*b*
Muslim, imām, 30
Muslims, Foreword, 9, 11, 17, 18, 19, 20, 21, 22, 23, 25, 31, 35/25, 35/44; all classes of, have equal rights and obligations, 21; and non-Muslims, federation of the, 28
Muslim States, cf. Foreword

nabiy, 25
Naqīb, 11, 31
Naqibs, 11
nationality, Islamic reform of the notion of, 22
naturalisation, 25

"one ruler and one law," 13
Orientalists' Conference, 10

pledge, violation of, 35/13
prayers, congregational, 13
predpisaniye, 13
prescripcion, 13
prescription, 13
prescrizione, 13
Prophet (of Islam), Foreword, 2, 3, 6, 7, 9, 11, 12, 13, several times, 18, 21, 25, 30, 33, 34; accepted by the Jews as their sovereign, 25; as the final court of appeal, 20, 25; his authority and decision as final, acknowledged by the Jews, 25; Jews' supreme court of appeal, 25: perennial and inspiring source of Muslim law, Foreword; *see also* Muhammad, Umma

qiblah, pilgrimage to a common, 13
quarter, 25
Quraish, 11, 17, 21, 25 several times, 35/1, 35/3, 35/20*b*, 35/43
Qur'ān, 1, 12

rab'ah, 35/3.
Ranke, 4
ransom, 21, 25, 35/3-12-*a*
rasūl-allāh, 25
refuge, 35/41
Refugees, 17, 22; and Helpers, code of, 19: *see also* Emigrants, Immigrants and Muhājirūn
relationship, considerations of, 25
Revenue, 10
righteousness, 21
Roman (Byzantine) empire, 7
Rousseau, 13

Ṣaḥīfah, 12, 35/22, 35/39, 35/42, 35/46
Sallām ibn Mishkam, 21
saqīfah, 11, 21
Sawiq, battle of, 21
Scripture, people of, 25
self-respect, 21
Shu-king, 1
Sīrah, 25
as-Sīrah ash-Sha'wiyah, 21
social contracts, 13
Solon, cf. Foreword
Spain, 25
Sprenger, 4

Tabarīy, 25
Tā'if, 7, 15
Tāriq, 25
Temple, 10
Torrey, 25
tribalism, 10, 13
Trivandrum, 10

Umaiyad caliphate, cf. Foreword
Umaiyad caliphs, 25
ummah, 21, 35/2, 35/25
Ummī, cf. Foreword; *see also* Prophet, Muḥammad
'Uthmān, 25

Vorschrift, 13

Ward, Councils, 21
Wellhausen, 4, 15
Wensinck, 4

Yāsa, 1
Yathrib, 35/1, 35/39, 35/44; *see also* Madīnah
yāsmah, 1

zahāt, 13
Zuhrīy, 30

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